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Revised Fiscal Note

(replaces fiscal note dated April 19, 2021)

Drafting Number: LLS 21-0775 **Date:** May 17, 2021
Prime Sponsors: Rep. Herod; Gonzales-Gutierrez **Bill Status:** House Second Reading
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Bill Topic: MEASURES TO ADDRESS LAW ENFORCEMENT ACCOUNTABILITY

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill allows for a civil suit to be filed against Colorado State Patrol officers; requires multi-agency review of cases involving use of force or other actions resulting in injury or death; and makes other adjustments to provisions of SB 20-217. It will increase state expenditures on an ongoing basis.

Appropriation Summary: The bill requires an appropriation of \$2.2 million to the Department of Public Safety in FY 2021-22. The Risk Management Fund is continuously appropriated to the Department of Personnel and Administration.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the House Judiciary and Appropriations Committees. The fiscal note has also been updated to revise costs in the Department of Public Safety.

Table 1
State Fiscal Impacts Under HB 21-1250

	Budget Year	Out Year
	FY 2021-22	FY 2022-23
Revenue	-	-
Expenditures¹		
General Fund	\$2,218,346	\$2,897,302
Highway Users Tax Fund		\$1,472,163
Risk Management Fund	\$2,582,742	-
Centrally Appropriated	\$617,629	\$495,432
Total Expenditures	\$5,418,717	\$4,864,897
Total FTE	17.6 FTE	19.0 FTE
Transfers	-	-
TABOR Refund	-	-

¹ First-year legal and settlement costs will be paid using available funds in the Risk Management Fund in the Department of Personnel and Administration. For FY 2022-23 and future years, these costs will be paid by the Department of Public Safety with Highway Users Tax Fund (HUTF) and General Fund money through common policy assessments based on actual legal and settlement costs incurred.

Summary of Legislation

This bill makes adjustments to certain provisions of Senate Bill 20-217, as detailed below.

Definitions. The bill defines "contact" to mean an in-person interaction and expands the definition to include welfare checks. The bill also defines "exonerated" in the context of criminal, civil, and administrative proceedings, and internal investigations.

Body-worn cameras. The bill clarifies when body-worn cameras or dash cameras may be turned off and provisions related to the release of the footage. Upon the bill's enactment, officers wearing body-worn cameras are required to comply with SB 20-217's body-worn camera provisions.

Contact reporting. The bill moves up the deadline for local law enforcement and the Colorado State Patrol (CSP) to report on "contacts" by one year to January 1, 2022. The bill also clarifies and adds information that must be reported to the Department of Public Safety.

POST-certified peace officer suspensions. SB 20-217 required the Peace Officer Standards and Training (POST) Board to permanently decertify a peace officer if the officer failed to intervene, as defined in the bill, and where serious bodily injury or death occurred. The bill changes the penalty to a suspension of the officer's certification for one year, and clarifies the process. The POST Board has the authority to permanently revoke or suspend the certification of any peace officer who enters into a deferred judgement, prosecution, or diversion agreement for a crime involving the unlawful use of force or failure to intervene.

Whistleblower protections. The bill prohibits peace officer employers from retaliating against a whistleblower peace officer. A peace officer has the right to bring a civil action.

Civil action against State Patrol officers. Senate Bill 20-217 allowed for a civil action to be taken against a local law enforcement officer for deprivation of an individual's rights. This bill expands the provision to allow this civil action to be taken against Colorado State Patrol officers in the Department of Public Safety. Statutory immunities and limitations on liabilities, damages, or attorney fees do not apply to these claims.

Investigations into use of force. The bill restricts local law enforcement and the CSP from presuming an officer's innocence in a use of force case and requires an investigation into these cases. If a person believes that a law enforcement agency has violated the investigation requirement, they must submit a complaint to the POST Board, which must refer the complaint to an administrative law judge to determine whether a violation occurred. Where a violation is found, the POST Board must discontinue providing POST Cash Fund money to the employer for one year from the date of the finding.

Multi-agency review of use of force. The bill applies multi-agency review protocols for peace officer-involved shooting investigations to incidents involving use of force or other weapon by a peace officer that results in serious bodily injury or death.

Use of de-escalation techniques. The bill requires a peace officer to use de-escalation techniques, as defined in the bill, prior to the use of physical force and requires the use of physical force to be limited to the duration necessary to accomplish the officer's legitimate law enforcement objective and to diminish situations involving imminent threats of serious physical injury or death to the officer or another person, as defined in the bill. The bill also defines "totality of the circumstances."

Attorney General subpoena power. The bill permits the Attorney General to issue subpoenas to conduct an investigation into patterns or practices of conduct by a government authority or its agent that deprives individuals of their rights.

New employee vetting for prior misconduct. The bill requires that prior to hiring a new employee, appointing a new employee, or transferring an existing employee to a position requiring POST certification, a law enforcement agency shall determine if the person has a record contained in the POST misconduct database. If the person is listed in the database and the law enforcement agency proceeds to employ the person in a position requiring POST certification, the agency shall notify the POST Board of the hire, appointment, or transfer.

Duty to report excessive force. The bill clarifies that local law enforcement and CSP officers have the duty to report the use of excessive force.

POST database. The bill clarifies and adds information required to be included in the POST Board database related to peace officer misconduct. Any person or law enforcement agency that provides inaccurate data is subject to a fine set in rule by the POST Board. By January 1, 2022, the POST Board is required to adopt procedures to allow a peace officer to seek review of their status based on new evidences or circumstances not previously provided to show the peace officer's record may be removed from the database.

Contacts – profiling. The bill also defines "legal basis" as it pertains to making a contact.

State Revenue

Beginning in FY 2021-22, to the extent the bill increases civil case filings or POST Board fines, state fee and fine revenue will increase. This revenue is subject to TABOR.

State Expenditures

The bill will increase Risk Management Fund costs in the Department of Personnel and Administration (DPA), and General Fund costs in the Department of Public Safety (DPS). Workload will also increase in the Department of Law and the Judicial Department. Costs are shown in Table 2 and described below.

**Table 2
Expenditures Under HB 21-1250**

Cost Components	FY 2021-22	FY 2022-23
Department of Personnel and Administration¹		
Risk Management – Legal Services	\$582,742	\$582,742
Risk Management – Settlements	\$2,000,000	\$2,000,000
FTE – Legal Services	3.0 FTE	3.0 FTE
DPA Subtotal	\$2,582,742	\$2,582,742
Department of Public Safety		
Personal Services	\$1,383,952	\$1,489,881
Operating Expenses	\$21,600	\$21,600
Capital Outlay Costs	\$99,200	-
Vehicle Lease and Mileage Costs	\$183,242	\$183,242
Training Costs	\$92,000	\$92,000
Field Agent and Crime Scene Equipment	\$438,352	-
Centrally Appropriated Costs ¹	\$617,629	\$495,432
FTE – Personal Services	14.6 FTE	16.0 FTE
DPS Subtotal	\$2,835,975	\$2,282,155
Total	\$5,418,717	\$4,864,897
Total FTE	17.6 FTE	19.0 FTE

¹ First-year legal and settlement costs will be paid using available funds in the Risk Management Fund in the Department of Personnel and Administration. For FY 2022-23 and future years, these costs will be paid by the Department of Public Safety with Highway Users Tax Fund (HUTF) and General Fund money through common policy assessments based on actual legal and settlement costs incurred.

² Centrally appropriated costs are not included in the bill's appropriation.

Department of Personnel and Administration. Removing government immunity for Colorado State Patrol officers is expected to increase lawsuits filed against the state, which will increase costs in the state's Risk Management Program, administered by DPA. Cost estimates are based on the data and assumptions detailed below, and include legal defense costs and settlement payments. First-year costs will be paid using available reappropriated funds in the Risk Management Fund. Out-year costs will be paid by the Department of Public Safety using 43 percent General Fund and 57 percent HUTF.

- **Data and assumptions.** Over the past five-year period, the state has received an average of 14 claims per year filed against peace officers employed by the DPS. Of these, an average of 4 claims involved lawsuits and an average of 1 claim was awarded a settlement. This analysis assumes that the removal of government immunity will significantly increase the number of claims filed against the state, estimated at 5 times the current average, resulting in an increase of 56 claims, 15 lawsuits, and 4 settlements per year.
- **Legal services.** Assuming that of the approximately 56 new claims estimated to be filed against CSP officers per year, each will require initial legal services of 30 hours per case, and 15 will require adjudication in court requiring an additional 250 hours per case. Legal services will be provided by the Department of Law at a rate of \$106.34 per hour, and this cost will be fully reappropriated to the department with 3.0 FTE.

- **Settlements.** CSP-related settlements have averaged \$173,961 over the past five years. However, without the Colorado Governmental Immunity Act tort cap, currently set at \$387,000, settlements will likely exceed prior amounts. Assuming 4 new cases result in settlements per year, and that the average cost will be approximately \$500,000 per settlement, including attorney's fees, this will result in \$2.0 million paid from the Risk Management Fund each year.
- **Costs to be addressed through the annual budget process.** The state's actual costs will depend on a number of factors, including the number and complexity of cases, case outcomes, and the timing of cases and judgments. Depending on the number of cases annually, costs may vary from year to year or be spread out over a number of years. It is assumed that ongoing costs will be addressed through the annual budget process once more information on cases and settlements are known.

The state's liability policy, which is paid through DPA's State Liability Pool, is also expected to incur increased expenditures under the bill, which will be passed to state agencies through the operating common policies. This expenditure increase will be addressed through the annual budget process as actual insurance policy costs are known.

Finally, the DPA may have increased costs in the Office of Administrative Courts related to use of force investigations. This will be addressed through the annual budget process as the number of complaints are known.

- **Mitigating factors.** The policies, procedures, training requirements, and enforcement mechanisms created by this bill and Senate Bill 20-217 may reduce lawsuits filed against the Colorado State Patrol.

Department of Public Safety. The Colorado Bureau of Investigation (CBI) and the Colorado State Patrol (CSP) will have increased costs under the bill.

- **Colorado Bureau of Investigation.** Costs in the CBI will increase by 16.0 FTE. Whether directly requested or involved through a community's incident response team, caseload in the CBI will increase to meet the bill's requirement for multi-agency review for peace officer-involved incidents involving use of force or other weapon resulting in serious bodily injury or death. Staff calculations assume that the CBI will investigate as many cases of serious bodily injury as it has officer-involved shootings per year, or at least 100 investigations per year. It is assumed that each investigation requires a team of at least 3 agents, investigators, and technicians, and takes about three weeks to complete.

Additional CBI staff, to be distributed between CBI's regional offices in Denver, Grand Junction, and Pueblo, includes:

- 8.0 FTE POST-certified field agents;
- 4.0 FTE crime scene investigators;
- 2.0 evidence technicians;
- 1.0 managing investigator; and
- 1.0 administrative assistant.

- **Colorado State Patrol.** The CSP will likely be called in as incident response in cases of officer-involved serious bodily injury. Overall, this impact is expected to increase workload. If it is determined that additional overtime is required, this will be accounted for through the annual budget process.

Department of Law. In addition to legal services provided to the DPA by the department, the POST Board will have a minimal workload increase under the bill. As resources were provided for the POST Board in SB 20-217, no change in appropriations is required.

Judicial Department. The bill is expected to increase civil case filings, which will increase trial court workload. This workload increase can be accomplished within existing resources.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

TABOR refunds. The bill may increase state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Local Government

Costs and workload will increase for local law enforcement agencies to conduct use of force investigations under the bill. Similar to the state, workload for local government agencies involved in Critical Incident Response Teams, including police departments, sheriff's offices, and district attorney's offices, will also increase; this work includes investigating, evaluating, and reviewing any incident where injury or death occurred. District attorney's offices are also required to write and release a written report explaining the district attorney's findings when no charges are being brought against the officer.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2021-22, the bill requires the following appropriations:

- \$582,742 in reappropriated funds to the Department of Law from the continuously appropriated Risk Management Fund with 3.0 FTE; and
- \$2,218,346 from the General Fund to the Colorado Bureau of Investigation in the Department of Public Safety with 14.6 FTE.

Departmental Difference

The Department of Public Safety assumes it requires an additional \$1.1 million per year, paid from the Highway Users Tax Fund, to hire 6.0 FTE Colorado State Patrol sergeants and 1.0 FTE administrative assistant to provide regional support to Critical Incident Response Teams in conducting use of force investigations. The fiscal note does not include these costs as it assumes that CBI agents will manage this caseload and that the CSP will manage incident response in its existing workload, with potential overtime costs that can be addressed through the annual budget process.

State and Local Government Contacts

Counties	District Attorneys	Information Technology
Judicial	Law	Municipalities
Personnel	Public Safety	Sheriffs